

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

UNITED STATES OF AMERICA

v.

No. 3:08cr79-MCR

ELLEN MEREDITH STUBENHAUS,
Defendant.

PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c)(1)(A)-(B), the United States Department of Justice and Ellen Stubenhaus hereby enter the following plea agreement:

1. Parties

This agreement is entered into, by, and between, Ellen Stubenhaus as the defendant, Clifford L. Davis as attorney for the defendant, and the United States Department of Justice, Tax Division. This agreement specifically excludes and does not bind any other state or federal agency, including United States Attorneys and the Internal Revenue Service, from asserting any civil, criminal, or administrative claim against the defendant.

2. Waiver of Indictment and Waiver of Challenges to Extradition

a. The parties contemplate that defendant will plead guilty to a criminal information. Defendant understands that instead of being charged by criminal information, she has the right to be charged by an indictment returned by a duly constituted grand jury in this district. A grand

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jury is comprised of 16 to 23 impartial individuals, and its members have a duty to hear facts from witnesses who are presented by the prosecutor. After hearing the witnesses testify, the grand jury would decide whether the government has produced sufficient evidence to show probable cause that a crime has been committed, and that the defendant is the person who committed it. The grand jury will return an indictment only if at least twelve of its members agree that probable cause is established.

b. Defendant understands that she has a right to have her case presented to the grand jury, but may waive this right if she chooses to do so, and that if she does so, the case will proceed by criminal information, which is a written accusation prepared by the prosecutor. Defendant hereby waives her right to be charged by grand jury indictment, and agrees to be charged by criminal information.

c. Defendant also waives any and all challenges relating to her extradition to the United States, and to the personal jurisdiction of the Court over her.

3. Guilty Plea to Conspiracy

a. Defendant will plead guilty to a one-count criminal information charging a *Klein* conspiracy to defraud the United States, in violation of 18 U.S.C. § 371. If defendant pleads guilty to the criminal information, and persists in that plea up to and through sentencing, the Department of Justice, Tax Division will dismiss the remaining charges against defendant. The maximum penalties for violation of 18 U.S.C. § 371 are 5 years imprisonment, a \$250,000 fine, and 3 years of supervised release. Defendant understands that she cannot have imposition or execution of sentence suspended, nor is she eligible for parole under current law. In addition,

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defendant understands that a \$100 special assessment will be imposed, and shall be due and payable at the time of sentencing. If defendant is unable to pay the special assessment prior to sentencing, defendant agrees to participate in the Inmate Financial Responsibility Program.

b. Defendant understands that by voluntarily pleading guilty to the charge in the information, the defendant, as to the count pled herein, knowingly waives and gives up constitutional rights which attend a defendant on trial in a criminal case. These constitutional rights include: the right to plead not guilty; the right to have a jury or judge determine guilt on the evidence presented; the right to compel the government to prove guilt beyond a reasonable doubt; the right to confront and cross-examine witnesses; the right not to be compelled to incriminate oneself; the right to testify; the right to present evidence; and the right to compel the attendance of witnesses.

c. The defendant is pleading guilty because she is in fact guilty of the charge alleged in the information. In pleading guilty, the defendant acknowledges that were this case to go to trial, the government would present evidence to support the charge beyond a reasonable doubt.

d. Upon the District Court's adjudication of guilt of the defendant for the charged crime, the United States Department of Justice, Tax Division, will not prosecute the defendant further for the same transactions or occurrences to which the defendant has pled guilty, nor for any of the other conduct described in the currently-pending indictment. The defendant agrees that the government at all times during this investigation and prosecution has proceeded in good faith and that substantial evidence exists to support the charge.

e. Nothing in this agreement shall protect the defendant in any way from

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prosecution for any offense committed after the date of this agreement.

f. If the defendant is not a citizen of the United States, the defendant understands that this conviction may adversely affect the defendant's immigration status and may lead to deportation.

g. The parties agree that the sentence to be imposed is left solely to the discretion of the District Court, which is required to consult the United States Sentencing Guidelines and take them into account when sentencing the defendant. The parties further understand and agree that the District Court's discretion in imposing sentence is limited only by the statutory maximum sentence and any mandatory minimum sentence prescribed by statute for the offense.

h. Except as otherwise provided in this agreement, both parties reserve the right to advise the District Court and other authorities of their versions of the circumstances surrounding the offense committed by the defendant. The government further reserves the right to correct any misstatements by the defendant or defendant's attorney and to present evidence and make arguments pertaining to the application of the sentencing guidelines and the considerations set forth in Title 18, United States Code, Section 3553(a), including sentencing recommendations, and whether departure upward or downward is appropriate.


3. Sentencing and Appeal Waiver

a. Defendant understands that any prediction of the sentence that may be imposed is not a guarantee or binding promise. Due to the variety and complexity of issues that may arise at sentencing, the sentence may not be subject to accurate prediction.

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b. The parties understand and agree that either party may offer additional evidence relevant to sentencing issues. However, the Court is not limited to consideration of the facts and events provided by the parties. Adverse rulings or a sentence greater than anticipated shall not be grounds for withdrawal of the defendant's plea.

c. With respect to calculation of the Sentencing Guidelines, the parties have reached the following agreements, which are not binding on the Court:

- (i) That the appropriate Sentencing Guideline Chapter is Chapter 2T, Offenses Involving Taxation, and that the appropriate Guideline is Section 2T1.9, Conspiracy to Impede, Impair, Obstruct, or Defeat Tax.
- (ii) That the appropriate cross-reference under Section 2T1.9(a)(1) is to Section 2T1.1.
- (iii) That under Section 2T1.1(a)(1), the appropriate base offense level is 24, based on a tax loss of \$2.5 million to \$7 million. The parties agree that under Section 2T1.1(c)(2) Note A, the tax loss should be calculated by taking 20% of the unreported gross receipts of Stubenhaus herself and of PQI as an organization. Specifically, the total gross receipts are \$15,240,449.32, representing \$513,299.32 from Stubenhaus' sales of PQI and its vendors, and \$14,727,150 received by PQI. Thus, the parties therefore agree that the foreseeable tax loss resulting from the conspiracy is \$3,048,089.86, and accordingly that the base offense level is 24.
- (iv) That the defendant merits the two point enhancement under Section 2T1.1(b)(2) for sophisticated means, based on the defendant's use of offshore nominee companies and a warehouse bank.

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- (v) That the defendant merits the two point enhancement for failing to report \$10,000 or more of illegal-source income, in that defendant failed to report any of her income from the sale of PQI's fraudulent debt elimination vendors.
- (vi) That the defendant merits a two point enhancement under Section 2T1.9(b)(2) for encouraging persons other than the co-conspirators to violate the tax laws, namely, defendant's PQI clients.
- (vii) That the defendant merits the third point for early acceptance of responsibility under Section 3E1.1 (provided the probation office calculates the final offense level as 16 or greater, as expected).

d. The parties agree that defendant was detained in Costa Rica for 26 months pending her extradition to the United States. The parties agree that defendant is not entitled to any credit from the Bureau of Prisons towards the sentence ultimately imposed in this case for the time defendant was detained in Costa Rica pending her extradition. However, the parties also agree that the time defendant spent detained in Costa Rica is a pertinent fact under 18 U.S.C. § 3553(a) for the Court to consider in imposing sentence, and that defendant should receive a lower sentence than she would have otherwise received had she not been detained in Costa Rica.

e. The government agrees to recommend that defendant be sentenced to 44 months incarceration, representing the bottom end of defendant's Guideline range as contemplated by this agreement (70 months) less 26 months served in Costa Rica. In the event the Court or probation office calculates a lower Guideline range than contemplated by this agreement, the government will still be permitted to recommend a sentence of 44 months. The defendant agrees

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to recommend a sentence of 34 months incarceration, representing the statutory maximum for a violation of 18 U.S.C. § 371 (60 months) less 26 months served in Costa Rica. In the event the Court or probation office calculates a lower Guidelines range than contemplated by this agreement, defendant will still be bound to recommend a sentence of 34 months. Neither party's sentencing recommendation is, or is intended to be, binding on the Court.

f. Defendant understands that she ordinarily has the right to appeal her sentence. Defendant hereby waives her right to appeal her sentence, except that she reserves the right to appeal her sentence if it exceeds the maximum permitted by statute. The government retains its appeal rights.

4. Restitution

a. Both parties remain free to argue for a restitution award in any appropriate amount. The defendant agrees that, if restitution to the Internal Revenue Service is awarded, any restitution amount results from her fraudulent conduct.

b. The parties also understand that the defendant will receive proper credit for any restitution payments made pursuant to this agreement. Except as set forth in the previous sentence, nothing in this agreement shall limit the IRS in its lawful examination, determination, assessment, or collection of any taxes, penalties or interest due from the defendant for the time period(s) covered by this agreement or any other time period.

c. The defendant agrees that, unless the Director of the Administrative Office of the United States Courts directs her otherwise, all payments made pursuant to the Court's restitution order are to be sent only to the Clerk of the Court for the Northern District of Florida. With each

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payment to the Clerk of the Court made pursuant to the District Court's restitution order, defendant will provide the following information:

- (i). Defendant's name and Social Security number;
- (ii). The District Court docket number assigned to this case;
- (iii). Tax year(s) or period(s) for which restitution has been ordered; and
- (iv). A statement that the payment is being submitted pursuant to the District Court's restitution order.

d. The defendant agrees to include a request that the Clerk of the Court send the information, along with defendant's payments, to the IRS at the following address: IRS-RACS, Attention: Mail Stop 6261, Restitution, 333 W. Pershing Avenue, Kansas City, MO 64108. The defendant also agrees to send a notice of any payments made pursuant to this agreement, including the information listed in the previous paragraph, to the IRS at that address.

e. The defendant agrees that this agreement, or any judgment, order, release, or satisfaction issued in connection with this agreement, will not satisfy, settle, or compromise the defendant's obligation to pay the balance of any remaining civil liabilities, including tax, additional tax, additions to tax, interest, and penalties, owed to the IRS for the time period(s) covered by this agreement or any other time period.

f. The defendant agrees to file tax returns and cooperate with the IRS in its civil examination, determination, assessment, and collection of her income taxes, and further agrees not to conceal, transfer, or dissipate funds or property that could be used to satisfy such taxes, penalties, and interest. The defendant agrees to provide the IRS any documentation in the

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defendant's possession and/or control requested by the IRS in connection with its civil examination, determination, assessment, and collection of such income taxes prior to sentencing.

g. The defendant also agrees to work diligently with the IRS to resolve the liability for all taxes, interest, and penalties due and owing to the IRS, including all taxes, interest, and penalties on her individual liabilities for 2002 through the present.

h. The defendant agrees that any statements made by her to the IRS and/or in this agreement shall be admissible against the defendant without any limitation in any civil or criminal proceeding and the defendant stipulates to the authenticity and admissibility, in any civil or criminal proceeding, of any documentation provided by the defendant to the IRS. The defendant hereby waives any protection afforded by Rule 410 of the Federal Rules of Evidence and Rule 11(f) of the Federal Rules of Criminal Procedure with regard to any such statements and documentation. In the event that the defendant withdraws from this agreement prior to pleading guilty and/or fails to fully comply with any of the terms of this agreement, the United States will, at its option, be released from its obligations under this agreement, but under no circumstances shall the defendant be released from the agreements and waivers made by her in this and the preceding two paragraphs.

5. Press Release

Defendant consents, under 26 U.S.C. § 6103(c), to disclosure of the entire public record of this case to the news media in making a press release regarding defendant's conviction and sentence.

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6. Sealed Supplement


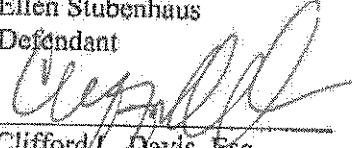
In every case in the Northern District of Florida before the Hon. M. Casey Rodgers in which the parties enter a plea agreement, Judge Rodgers requires the parties to enter a supplement to the plea agreement indicating whether or not the defendant agrees to cooperate with the United States. The parties agree to the sealed supplement in this case.

7. Entire Agreement

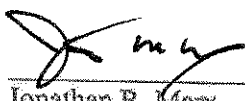
The parties acknowledge that this plea agreement, constituting 10 pages plus the sealed supplement, is the entire agreement between them, and that no other agreements, promises, representations, or understandings exist.

Defendant enters this agreement knowingly, voluntarily, and upon the advice of counsel.

Dated: 1-13-12


Ellen Stubenhaus
Defendant

Clifford L. Davis, Esq.
Counsel for Stubenhaus

Pamela C. Marsh
United States Attorney


Jonathan R. Marx
Trial Attorney
United States Department of Justice
Tax Division